

SERVICE DATE - MARCH 14, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34005

CANADIAN PACIFIC RAILWAY COMPANY—CORPORATE FAMILY TRANSACTION
EXEMPTION—INTERESTS IN DETROIT RIVER TUNNEL AND NIAGARA RIVER
BRIDGE

MOTION FOR PROTECTIVE ORDER

Decided: March 12, 2001

By motion filed February 27, 2001, Canadian Pacific Railway Company (CPR) seeks a protective order under 49 CFR 1104.14 for the unredacted versions of the following draft agreements which were submitted under seal: Distribution Agreement among CPR, Canadian National Railway Company (CN) and CNCP Niagara-Detroit Partnership; Dissolution Agreement between CPR and CN; Partnership Agreement between CPR and Borealis Infrastructure Trust Management, Inc. (Borealis); Operating, Management and Maintenance Agreement among Detroit River Tunnel Partnership, CPR and Borealis; and Partnership Agreement between CPR and CN. At the same time, CPR filed a notice of exemption under 49 CFR 1180.2(d)(3) for what CPR describes as a corporate family transaction, involving CPR's reorganization of the ownership of certain assets in the Detroit River Tunnel and the Niagara River Bridge.¹

Good cause exists to grant the motion for protective order. Issuance of the protective order is requested to protect the commercially sensitive data contained in the various draft agreements. CPR notes that, when the draft agreements are finalized in the near future, it will file a supplement to this motion consisting of the final agreements (to be filed under seal) and redacted versions for the public record.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix to this decision. Issuance of the protective order ensures that the railroads' confidential information will be used solely for this proceeding and not for

¹ CPR has also filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

other purposes. Because CPR did not submit a proposed protective order, the form set out in the Appendix to this decision will be imposed.

It is ordered:

1. CPR's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The various draft agreements submitted in STB Finance Docket No. 34005 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

Protective Order

1. For the purposes of this Protective Order, “confidential information” means provisions of the Distribution Agreement among Canadian Pacific Railway Company (CPR), Canadian National Railway Company (CN) and CNCP Niagara-Detroit Partnership; the Dissolution Agreement between CPR and CN; the Partnership Agreement between CPR and Borealis Infrastructure Trust Management, Inc. (Borealis); the Operating, Management and Maintenance Agreement among Detroit River Tunnel Partnership, CPR and Borealis; and the Partnership Agreement between CPR and CN filed February 27, 2001, in STB Finance Docket No. 34005.

2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of CPR or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Undertaking

I, _____, have read the Protective Order governing the filing of confidential information by CPR in STB Finance Docket No. 34005 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 34005 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that CPR shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated:

Name

Position/Affiliation: